IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/12/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.27302 of 2003
and
CRL.M.P.NO.7658 OF 2003

M.Raja .. Petitioner

-Vs-

The State rep. by
The Deputy Superintendent
of Police, Vigilance and
Anti-Corruption,
Dharmapuri,
Dharmapuri District. .. Respondent

Petition filed under Section 482 Cr.P.C. praying for the relief as stated therein.

For Petitioner: : Mr.N.K.Chandrasekar
for M/s.S.Duraisamy &
K.Elangovan

For Respondent: : Mr.K.Abudukumar Rajarathinam,
Govt. Advocate (Crl.side)

:O R D E R

The above Criminal Original Petition has been filed praying to call for the records relating to the F.I.R. in Cr.No.3/AC/2003 dated 7.2.2003 on the file of the respondent and quash the same.

2. Tracing the history of the case, what comes to be known is that the petitioner is working as Cooperative Sub Registrar, Krishnagiri Agricultural Producers Marketing Society, Krishnigiri; that during 198 8 to May 2001, he was holding additional charge as Managing Director of Kaveripatinam Agricultural Producers Marketing Society; that the Central Government evolved a scheme through the National Agriculture Cooperative Marketing Federation (hereinafter called as NAFED) for procurement of fair average quality of copra; that as per the said scheme, a minimum price would be fixed by NAFED; that the Tamil Nadu Cooperative Marketing Federation(TANFED) had been appointed as principal agent for procuring the

copra; that TANFED would purchase the copra from the farmers and the disbursement of amount was by way of cheque, and the said purchase was in operation between 25.8.2000 to 3.2.2001; that after two years, the respondent registered a case under Sections 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act as well as Sections 120(B) r/w 417, 420, 409, 468 and 477, IPC on the allegation that copra worth about Rs.16,19,11,750/- was purchased and procurements were made at the rate of Rs.32.50 per kg., whereas the actual market price was only Rs.24/- and thus, there was a loss to the Government to the tune of Rs.3,28,48,000/-; that the petitioner, who was acting as the Managing Director on additional charge, was implicated as A5 and he has come forward to file the above Criminal Original Petition for the relief extracted supra.

3. In the counter filed on behalf of the respondent, besides generally denying all the averments contained in the petition, the petitioner would specifically admit the averments made in paragraphs 1 to 4 of the petition and would submit that the petitioner is a "public servant" and he was in charge of and responsible for the procurement of copra from the farmers/coconut growers with the assistance of the employees of NAFED and TANFED and the officials of the said society in ensuring the identity of beneficiaries, quality and quantity with measurement and shortage and for proper maintenance of records.

4. The counter affidavit would further state that during the year 2 000, the Government of India announced the Price Support Scheme with the view to benefit and help the farmers/coconut growers to make procurement of fair average quality of copra at the rate of Rs.32.50 per kg.; that the prevailing market rate was Rs.24.00 per kg.; that the NAFED and TANFED entered into an agreement between themselves and decided to appoint Taluk Agricultural Producers Cooperative Marketing Societies (APCMS) as its agency in different places to procure copra; that the Kaveripattinam Society is one among such agencies so appointed as procurement centre and the procurements were made from 25.8.2000 to 3.2.2001 at Kaveripattinam.

5. The counter affidavit would further give the procedures of procurement of copra by the representatives of the NAFED and TANFED and the claim bills for making the payments to coconut growers would be prepared and sent to the Regional Manager at Dharmapuri who would claim the same and send to the Marketing Society for disbursement; that in the purchase register, entries were made as if 4981.900 Metric Tonnes of copra worth about Rs.16,19,11,750/- was purchased and entries were made in the stock register signed by A2, A3 and A5, the petitioner herein; that the entries effected in the identity cards were manipulated, thus boosting the extent, number of trees, yield etc. and procurements have been made with ineligible persons residing outside the jurisdiction of Kaveripattinam Society, further fabricating the records such as bills, stock registers, delivery challans etc., fabricating the same and amounts have been disbursed by A5, the petitioner herein and A8 one Ganesan; that the commission of the said irregularities caused wrongful loss to the Government to the tune of Rs.3,28,48,000/- being the difference amount between the actual market price of copra and the price paid under the Price Support Scheme and therefore, the

petitioner is also responsible for causing wrongful loss to the Government and hence the case against him also for the pecuniary advantage obtained by him in connivance with others for cheating the Government; that the petitioner was also responsible to verify the quality and quantity of copra during the purchase, thus willfully failing to follow the instructions. On such averments, the respondent would ultimately pray to dismiss the above Criminal Original Petition.

6. During arguments, the learned counsel appearing on behalf of the petitioner would submit that there are no mala fides in the purchase of the copra; that on preliminary investigation, the Deputy Superintendent of Police registers a case and himself takes up the same for investigation; that after two years of the alleged commission of the offence, they have come forward to register the case without adhering to the Tamil Nadu Cooperative Societies Act and the Rules made thereunder by the Tamil Nadu Government; that the total number of accused are sixteen, of whom, the petitioner is arrayed as A5; that as per Section 164 of the Tamil Nadu Cooperative Societies Act, 1983 taking cognizance of the offences provided for, wherein under Sub-Section (2), it is clearly stated that every offence under this Act shall, for the purpose of the Code of Criminal Procedure Code 1973, be deemed to be non-cognizable; that Sub-Section 3 of the said Act contemplates that no prosecution shall be instituted under this Act without the previous sanction of the Registrar and such sanction shall not be given without giving to the person concerned a reasonable opportunity to represent his case. Learned counsel would point out that these mandatory provisions of law have not been adhered to so far as the case registered by the respondent is concerned, and therefore, the F.I.R. registered against the petitioner, who falls within the purview of the Tamil Nadu Cooperative Societies Act, is mala fide and is liable to be quashed.

7. At this juncture, the learned counsel would cite a decision delivered in State of Maharashtra v. Laljit Rajshi Shah reported in 2000 AIR SCW 698, wherein it is held as follows :
"In view of the rival submissions at the Bar, the sole question that arises for consideration is, as to what is the effect of the provisions of Section 161 of the Maharashtra Cooperative Societies Act in interpreting the provisions of Section 21 of the Indian Penal Code. It is undoubtedly true that the Cooperative Societies Act has been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution. The legislature no doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference would not make the officers concerned 'public servants' within the ambit of Section 21. The State Legislature had the powers to amend Section 21 of the Indian penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are 'public servants' under Section 161 of the Cooperative Societies Act would be repugnant to the definition of ' public servant' under Section 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the learned counsel, appearing for the State that by virtue of

deeming definition in Section 161 of the Cooperative Societies Act by reference to Section 21 of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code. The Indian Penal Code and the Maharashtra Cooperative Societies Act are not Statutes in pari materia. The Cooperative Societies Act is a completely self-contained Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both statutes have different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Cooperative Societies Act, in order to define a 'public servant' but those 'public servants' cannot be prosecuted for having committed the offence under the Indian Penal Code. It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act. When the State Legislatures make the Registrar, a person exercising the power of the Registrar, a person authorised to audit the accounts of a society under Section 81 or a person to hold an inquiry under Section 83 or to make an inspection under Section 84 and a person appointed as an Administrator under Section 78 or as a Liquidator under Section 103 shall be deemed to be 'public servants' within the meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is clear that a specific category of officers while exercising powers under specific sections have by legal fiction become 'public servant' and it is only for the purposes of the Cooperative Societies Act. That by itself does not make those persons ' public servants' under the Indian Penal Code, so as to be prosecuted for having committed the offence under the Penal Code. When a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something, the Act of legislature requires him to be teated as it obviously for the purposes of the said Act and not otherwise."

8. On the contrary, the learned government advocate on the criminal side appearing on behalf of the respondent would submit that copra was purchased from poor farmers and that NAFED and TANFED have been formed to serve the purpose of the farmers, in which the massive scandal has taken place, resulting in the case being registered not only under relevant provisions of the Indian Penal code, but also invoking the penal provisions of the Prevention of Corruption Act; that this petitioner who was the Managing Director of Kaveripattinam Agricultural Producers Marketing Society, in connivance with 15 other accused who are the revenue officials and public servants, forging the names of the farmers, has cheated the Government to the tune of crores of rupees in the purchase of copra and hence the case; that it is a serious case of misappropriation of the Central Government funds provided for the benefit of the farmers and in such cases, Section 125 of the Indian

Evidence Act is attracted. On such arguments, learned government advocate on the criminal side would ultimately conclude that there is no room for this Court to interfere with the case and that a thorough enquiry has to be conducted in order to punish the offenders in accordance with law.

9. Learned counsel would cite two judgments delivered in (i) Govt.of Andhra Pradesh v. P. Venku Reddy 2002 reported in AIR SCW 3895 and (ii) State of Maharashtra v. Prabhakarrao reported in (2002) 7 SCC 636. So far as the first judgment cited above is concerned, it is held therein :

"From sub-clause (ix) of Clause 8 of Section 2 of the 1988 act, it is evidence that in the expansive definition of 'public servant' elected office-bearers with President and secretary of a registered cooperative society which is engaged in trade amongst others in 'banking' and 'receiving or having received any financial aid' from the Central of State Government, are included although such elected office bearers are not servants in employment of the cooperative societies. But employees or servants of a cooperative society which is controlled or aided by the government, are covered by sub-clause (iii) of Clause 8 of Section 2. Merely because such employees of cooperative societies are not covered by sub-clause (ix) along with holders of elective offices, it cannot be said that an employee of a cooperative bank which is controlled and aided by the government, is not covered within the comprehensive definition of 'public servant' as contained in subclause (iii) of clause 8 of Section 2.

In construing definition of 'public servant' in clause 8 of Section 2 the Court is required to adopt a purposive approach as would give effect to the intention of legislature. In that view Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with much wider definition of 'public servant', was brought in force to purify public administration. When the legislature has used such comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing growing corruption in Government and semi-Government, departments, it would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of 'public servant', therefore, deserves a wide construction."

So far as the second judgment cited above is concerned, it is held therein :

"Under clause (iii) of Section 2(c), any person in the service or pay of a corporation established by or under a Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government and under clause (ix) the President, Secretary and other office-bearers of a registered cooperative society engaged in agriculture, industry, have been included in the definition of 'public servant'.

The question for consideration is whether the accused in the present case comes within the purview of the aforementioned clauses or any other clause of Section 2(c) of the Prevention of Corruption Act, 198 8. For determination of the question, enquiry into facts, relating to the management, control and funding of the society, is necessary to be ascertained. Unfortunately, the High Court in its order has not considered this question at all. It has proceeded on the assumption that Section 21 of

the Indian Penal Code is the relevant provision for determination of the question whether the accused is a public servant. As noted earlier, Section 21 IPC is of no relevance to consider the question which has to be on interpretation of provision of Section 2(c) of the Prevention of Corruption Act, 1988 read with the relevant provisions of the Maharashtra Cooperative Societies Act, 1960."

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the learned government advocate on the criminal side, it could be summed up that a criminal case has been registered against a number of accused who are cooperative society officials deputed and revenue officials and that they are the public servants within the meaning of the relevant provisions of law; that they have been put in charge of and responsible for the procurement of copra from the farmers, particularly the coconut growers, with the assistance of the employees of the NAFED and TANFED. It further comes to be seen that it is the central government which has evolved a scheme through the National Agricultural Cooperative Marketing Federation for the procurement of fair average quality of copra in cooperation with the Tamilnadu Cooperative Marketing Federation, which has been appointed as the principal agent for the procurement of copra and all these arrangements have been made so as to be beneficial to the agriculturists, particularly the coconut growers in the State.

11. While so, the petitioner herein, who is arrayed as the fifth accused in the list of accused numbering 16, has come forward to file the above petition seeking to quash the proceedings relating to the FIR in Crime No.3/AC/2003 dated 7.2.2003 registered by the respondent. The charge against all these accused is that between 25.8.2000 to 3 .2.2001, during the relevant period of the purchase of copras, the accused, joining hands with each other, particularly the petitioner as A5, who was in charge of disbursing of the amount, joining hands with A.8 viz., Ganesan, by manipulating records and creating fictitious names of farmers, have put false entries in the relevant records like the stock register, identity card, thus boosting the extent, number of trees, yield, etc., the procurement having been made from ineligible persons residing outside Kaveripattinam Society and further fabricating records such as bills, stock registers, delivery challans, etc., had committed serious irregularities, thus causing wrongful loss to the government to the tune of Rs.3,28,48,000/= being the difference amount between the actual market price of copra and the price paid under the Price Support Scheme, and therefore, the petitioner is also held responsible for causing the wrongful loss to the government and indulging in corrupt activities and hence the case has been registered against him also. The claim of the petitioner is that the fictitious names shown are imaginary and that they cannot be taken to have been established in the absence of any authenticated proof, and therefore, prima facie, there is no case put up by the respondent, and hence would seek for the quashing of the F.I.R.

12. On the contrary, on the part of the respondent, it would be argued that it is a serious embezzlement committed in connivance by each of the accused joining hands with each other in a cooperative manner, and

therefore, no interference could be caused in the investigation, particularly in view of the many decisions rendered by the Apex Court in the recent past to the effect that right from the framing of the F.I.R. down to the laying of the charge sheet, it is the domain and field of the Investigating Officer, in which no interference could be made, unless in extreme circumstances wherein the Courts are definite about a rank false case having been registered. To cite one of the judgments from the very recently delivered judgments of the Apex Court, including the one recently delivered in Union of India Vs. Prakash P.Hinduja and another {IV (2003) SLT 335}, is telling to the effect that no interference of any kind should be caused into the case which is pending investigation and the relevant portion of the judgment is extracted hereunder :

"Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of police station in Court under Section 173(2), Cr.P.C., this field being exclusively reserved for the Investigating Agency."

13. So far as the legality of the question raised on the part of the petitioner regarding whether the petitioner would come within the ambit of the definition of 'public servant' is concerned, the Apex Court, in its judgment reported in A.I.R. 2000 698, has held in relation to the Maharashtra Cooperative Societies Act, 1961 that the Chairman of the Maharashtra Cooperative Societies, though being a pubic servant under their Societies Act, is not so under Section 21 IPC, and therefore, he could not be prosecuted for the offences under Penal Code, thereby meaning that a 'public servant' coming within the meaning of Section 2 of the Maharashtra Cooperative Societies Act, 1960, is not a 'public servant' within the meaning of Section 2 of the Prevention of Corruption Act, 1947, by virtue of the provisions of Section 16 1 of the Maharashtra Cooperative Societies Act, 1960 r/w. Section 21 IPC.

14. However, in the later judgments reported in 2002 AIR SCW 3895 and (2002) 7 SCC 636, it is categorically decided that within the meaning of Section 2(c) of the prevention of Corruption Act, office bearers of Cooperative Societies, in consideration of the said question on the basis of interpretation of Section 2(c) of the Prevention of Corruption Act relating to management, control and funding of society are considered 'public servants', and therefore, the controversy raised in view of these two judgments rendered by the Apex Court is settled to the effect that the petitioner falls within the ambit of ' public servant' within the meaning of Section 2(c) of Prevention of Corruption Act.

15. In the above circumstances, this Court is not inclined to cause its interference into the ongoing investigation in the main proceedings initiated by the respondent, wherein large scale scandals are alleged to have taken place, which has to be investigated into in its depth and the truth found out, so as to arrive at a finality of decision in the filing of the final report before the Court concerned.

In result, the above criminal original petition is devoid of merits and becomes liable only to be dismissed and is dismissed as such.

Consequently, Crl.M.P.No.7658 of 2003 is also dismissed.

gr/gs.

Index:Yes.
Internet:Yes.

To

The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri,
Dharmapuri District.